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Video Admonishment Deputy Ochoa-Garcia #[redacted]

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Video Admonishment Deputy Tapia #[redacted]

Century Station Day Shift In-Service dated 12/12/15



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
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April 3, 2017

Captain Steven Katz
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: J.S.I.D. File #15-0658
L.A.S.D. File #015-17255-2116-013

Dear Captain Katz:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 12, 2015, fatal shooting of Nicholas Robertson by members of the Los Angeles County Sherriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Richard Ochoa-Garcia, #[redacted]
Deputy Jasen Tapia, #[redacted]

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MEMORANDUM

TO: CAPTAIN STEVEN KATZ
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Nicholas Robertson
J.S.I.D. File #15-0658
L.A.S.D. File #015-17255-2116-013

DATE: April 3, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 12, 2015, fatal shooting of Nicholas Robertson by Los Angeles County Sheriff's Department (LASD) Deputies Richard Ochoa-Garcia and Jasen Tapia. It is our conclusion that Deputies Garcia and Tapia acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on December 12, 2015, at 12:25 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports submitted to our office by LASD Detectives Timothy O'Quinn and Judith Luera. The reports include photographs, videos, audio-recorded interviews of witnesses, and radio transmissions. The voluntary statements of Deputies Ochoa-Garcia and Tapia were considered in this analysis.

FACTUAL ANALYSIS

Summary of Incident

On December 12, 2015, at approximately 10:50 a.m., multiple calls were received by the LASD's Century station's dispatch regarding a man firing a gun into the air, walking eastbound on Palm Avenue towards Alpine Avenue in the City of Lynwood. Deputies Richard Ochoa-Garcia and Jasen Tapia, both assigned to LASD's Century station, responded to the location.[1] Garcia and Tapia were provided a description of the suspect. Upon arrival Garcia and Tapia saw

[1] There were approximately six callers who called LASD's Century station describing a man armed with a gun and shooting in the air.

a man, later identified as Nicholas Robertson, matching the description provided by dispatch, walking southbound on the east sidewalk of Long Beach Boulevard and Magnolia Avenue. Garcia and Tapia saw that Robertson was armed with a handgun in his left hand. Garcia and Tapia parked their patrol vehicles on the southeast corner of Long Beach Boulevard and Magnolia Avenue and exited their vehicles. Garcia and Tapia immediately began ordering Robertson to drop the handgun. Robertson ignored the commands and walked westbound, across Long Beach Boulevard toward an Arco gas station located on the northwest corner of Long Beach Boulevard and Magnolia Avenue.[2]

Garcia and Tapia followed Robertson with their duty weapons pointed at him and continuously ordered him to drop his handgun. Robertson failed to comply with their commands, turned toward Garcia and Tapia and pointed his handgun at them. In response, Garcia and Tapia fired their duty weapons multiple times at Robertson. Paramedics responded to the scene and attempted life-saving measures on Robertson but Robertson succumbed to his injuries and was pronounced dead at the scene.

Deputy Statements

Statement of Deputy Richard Ochoa-Garcia

On December 12, 2015, Deputy Richard Ochoa-Garcia was assigned as a patrol deputy at LASD's Century station. Garcia was working a one-deputy patrol unit assignment in the City of Lynwood. Garcia was dressed in a department issued Class A uniform and driving a marked LASD patrol unit.[3]

Garcia was assigned to respond "Code 3" to a "shots fired" call.[4] Garcia was provided with a physical description of Robertson and was told that Robertson was seen walking on the sidewalk, firing a handgun in the air. Garcia heard several updates indicating Robertson was moving quickly to various locations and was last seen north of Carlin Avenue and Long Beach Boulevard. Garcia stated that the situation was rapidly evolving and he was concerned for public safety.

Garcia and Tapia responded to the call westbound on Carlin Avenue to Long Beach Boulevard and Magnolia Avenue and arrived simultaneously. Garcia observed several people pointing in the direction of Robertson, who was standing on the east curb line of Long Beach Boulevard. Robertson matched the description provided by dispatch and was holding a handgun in his left hand. Robertson began walking southbound on Long Beach Boulevard towards Garcia and Tapia.

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[2] The Arco gas station is located at 12131 Long Beach Boulevard, in the City of Lynwood. There is one driveway for vehicle traffic on the south side of the parking lot, allowing for access from Magnolia Avenue. Continuing north through the parking lot, there are four gas pump islands containing eight gas pumps. East of the gas pumps, there are two driveways allowing for vehicle traffic to enter from Long Beach Boulevard.

[3] At the time of the shooting, Garcia had been with LASD for approximately eight and a half years and was assigned to patrol at the Century station for approximately 11 months.

[4] "Code 3" is a response requiring lights and sirens.

Garcia and Tapia parked their patrol vehicles in the intersection south of the location, facing north at Carlin Avenue and Long Beach Boulevard. Garcia exited his patrol vehicle, drew his service weapon and pointed it at Robertson. Garcia advised dispatch that he was detaining a "417" male at gunpoint.[5] Garcia and Tapia began giving verbal commands to Robertson to "Drop the gun!" Robertson ignored the commands and began walking westbound across the street towards an Arco gas station. Garcia continued to give Robertson verbal commands to "Drop the gun" and to "Get on the ground!" but Robertson failed to comply. Garcia was concerned that Robertson may enter the Arco gas station, placing civilians in danger. Garcia observed several people in the parking lot of the gas station and in the street near the location.

Garcia and Tapia began to follow Robertson. Garcia noticed that southbound traffic on Long Beach Boulevard was stopped due to their police activity. Garcia also noticed that there were several pedestrians south of where Robertson was located and several patrons near the gas pumps at the Arco station.

As Robertson walked westbound, Garcia saw Robertson looking back over his shoulder in the direction of Garcia and Tapia. Robertson raised his right arm, simultaneously turned his upper torso to the right while "blading" his body, and pointed the handgun in his left hand at Garcia. In fear for his life, Garcia fired approximately five rounds at Robertson. Immediately after the shots were fired, Garcia radioed dispatch and advised that he had been involved in a shooting. Robertson initially remained standing, then turned and walked away from Garcia and Tapia. Robertson again raised his right arm, turned his upper torso to the right and pointed his gun at Garcia and Tapia with his left hand. Garcia fired approximately three to four more rounds at Robertson. Robertson fell to the ground while still holding the gun in his hand.

Garcia and Tapia continued to give Robertson verbal commands to drop the gun and show his hands. Robertson began crawling on his hands and knees with his back toward Garcia and Tapia and did not drop the gun. Robertson turned toward Garcia. Fearing that he would be shot, Garcia fired approximately three to four more rounds at Robertson. Robertson collapsed face down onto the ground with his gun concealed underneath his body.

Additional units arrived and formed an arrest team and tactical plan to approach Robertson in order to handcuff and arrest him. Robertson's hands were concealed underneath his chest. As they approached Robertson, Garcia saw a handgun underneath him, retrieved it and tossed it approximately three feet away from Robertson. Los Angeles County Fire Department personnel responded to the location to render aid to Robertson but Robertson died at the scene.

Statement of Deputy Jasen Tapia

On December 12, 2015, Deputy Jasen Tapia was assigned as a patrol deputy at the LASD's Century station. Tapia was working a one-deputy patrol unit assignment in the City of Lynwood. Tapia was dressed in uniform and driving a marked LASD patrol unit.[6]

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[5] A "417" is defined as a person with a gun.

[6] At the time of the shooting, Tapia had been with the LASD for approximately eight years and was assigned to patrol at the Century station for approximately one year, nine months.

Tapia heard a "417" call and was assigned to assist Garcia. A physical description of Robertson was provided to Tapia through dispatch and Robertson's location was updated several times as 9-1-1 calls were received from various citizens. The last update indicated that Robertson was seen walking eastbound on Carlin Avenue from Long Beach Boulevard. Tapia and Garcia were flagged down by several citizens at that location. One of the citizens told Tapia and Garcia that Robertson was seen on northbound Long Beach Boulevard toward Magnolia Avenue. Tapia noticed Robertson, who matched the description provided, walking southbound on Long Beach Boulevard on the east sidewalk.

Tapia observed Robertson swinging his hands in different directions, holding a gun. Tapia parked his patrol vehicle, exited his vehicle and stood behind the driver's side door. Tapia drew his service weapon and pointed it at Robertson. Tapia gave Robertson numerous commands to "Drop the gun!" Robertson ignored the commands and crossed the street toward the Arco gas station.

Tapia noticed that there were many people in the area and was fearful that Robertson would hurt them. Tapia and Garcia left their position of cover behind their vehicles and moved towards Robertson. Tapia stood approximately 20 yards away from Robertson and continued to order him to "Drop the gun!" Tapia saw Robertson twist his body to the right, holding a handgun above his waist, and point it at Tapia and Garcia. Tapia saw the barrel of Robertson's gun pointed directly at him. Tapia, in fear for his life, fired approximately five to six rounds at Robertson. Tapia notified dispatch that he was involved in a shooting.

Robertson fell down onto his hands and knees and crawled toward the Arco gas station. Tapia saw Robertson pushing his upper body off the ground with his right hand. Robertson then twisted his body again to the right, still holding the handgun, and pointed it at Tapia and Garcia a second time. Tapia fired approximately ten more rounds at Robertson. Robertson fell face down on the ground with his hands tucked underneath his body. Tapia continued to yell verbal commands to Robertson to show them his hands, as Robertson's hands and the gun were not visible. Tapia saw that Robertson's body was still moving and twitching.

Assisting units began to arrive and paramedics were requested to respond to the location. Tapia requested for a supervisor equipped with a shield to respond. Once the supervisor arrived, an arrest team was formed to approach and arrest Robertson. Another deputy assisted Tapia in handcuffing Robertson. That deputy pulled Robertson's hand from underneath his body and Tapia saw that Robertson was holding two to three live rounds in his hand. As Robertson's left hand was pulled from underneath his body, Tapia saw the gun exposed underneath him and moved the gun away from Robertson's body.[7]

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[7] Tapia stated throughout the entire incident, Robertson appeared to have a blank stare on his face and was unresponsive to his and Garcia's verbal commands and presence.

Witness Statements

Statement of [redacted]

[redacted] was on her way to the store but stopped at the Arco gas station to pump gas into her car. [redacted] were seated in the back seat of her vehicle. [redacted] friend, [redacted] was seated in the front passenger seat. [redacted] gave her [redacted] money to go into the gas station to purchase gas. [redacted] heard screaming outside of her vehicle. She looked to her right and saw deputies following Robertson, who was holding a gun in his hand. [redacted] screamed for her [redacted] to stay in the car and for the other occupants to get down. Robertson was a few feet away from [redacted][8]

[redacted] heard the deputies screaming at Robertson, but did not understand what they were yelling because they were speaking English. [redacted] heard gunshots but did not know where they came from. After the shooting stopped, a deputy approached her vehicle and found them all crying. [redacted] saw that Robertson had been shot and was lying on the ground.

Statement of [redacted]

[redacted] was driving with her [redacted] and their [redacted] southbound on Long Beach Boulevard in the number one lane. [redacted] saw deputies running on Long Beach Boulevard after Robertson, who was walking away from them. Robertson was holding a gun in his left hand. Robertson was walking east across Long Beach Boulevard and waving the gun around with the barrel pointing down. [redacted] saw Robertson raise his gun, then lower it back down. Robertson was standing next to the Arco gas station on the sidewalk and raised his gun again. The deputies yelled at him to put the gun down and to raise his hands. Robertson refused to comply, continued to walk away and laughed at the deputies.[9]

[redacted] heard the deputies give Robertson orders approximately four times but Robertson ignored them. When Robertson raised his gun, the deputies shot him. [redacted] estimated that she heard approximately 15 shots. Robertson was jumping several times as if he had been shot in the legs. Robertson fell forward and crawled away while still holding the gun in front of his chest, beneath his body. [redacted] believed the deputies fired at least three more times at Robertson as he was crawling away. [redacted] saw Robertson move for a few seconds and then stop. Shortly thereafter, several more deputies arrived and approached Robertson, yelling at him to drop the gun. [redacted] then saw the deputies disarm Robertson.

Statement of [redacted]

Off duty Los Angeles Police Department Officer [redacted] was working in the kitchen at his [redacted] "[redacted]" located on Long Beach Boulevard [redacted] the Arco Station when he heard a commotion in the [redacted] and his attention was drawn to the front windows facing Long Beach Boulevard.

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[8] [redacted] vehicle was parked next to the gas pumps.

[9] [redacted] stated Robertson was yelling something but she could not make out what he was saying

[redacted] saw Robertson walking south on the east sidewalk of Long Beach Boulevard directly toward his [redacted] Robertson was holding a black steel handgun in his left hand. [redacted] was scared that Robertson would enter the [redacted] and began telling customers to run to the back where an exit door was located. Robertson walked south along the east sidewalk to the northeast corner of Long Beach Boulevard and Magnolia Avenue, near the parking lot of [redacted] saw deputies in patrol cars arriving from the south and east of the [redacted] Robertson was looking in the direction of the deputies as he walked west across Long Beach Boulevard toward the Arco gas station across the street.

Robertson turned to walk north on the west sidewalk of Long Beach Boulevard, still holding the handgun. [redacted] could hear the deputies tell Robertson to "Drop the gun!" Robertson was shouting but [redacted] was not able to hear what he was saying. [redacted] saw Robertson raise the handgun with the barrel pointed in the direction of the deputies. [redacted] then heard approximately five or more gunshots from the deputies toward Robertson.

Robertson appeared to have been struck and moved into a prone position, but continued to crawl along the sidewalk in a northerly direction. The deputies again fired at Robertson. Robertson was still holding the handgun and moved both hands and the gun underneath his upper body, laying on top of it. [redacted] saw several more deputies arrive in marked patrol cars and did not see Robertson move any further.

Surveillance Videos

Surveillance video was obtained from various cameras located outside the Arco gas station. A camera that was pointed toward Magnolia Avenue depicts Robertson walking west across Long Beach Boulevard waving his hands in the air, holding a gun with his arm extended and looking in the direction of Garcia and Tapia. Garcia and Tapia both are outside their patrol vehicles with their weapons pointed at Robertson. Robertson continues to walk away from Garcia and Tapia with the gun in his hand, looking back for a few seconds.

Once Robertson reaches the Arco parking lot sidewalk where the pumps are located, another camera pointed in the direction of Long Beach Boulevard, depicts Robertson with a gun in his left hand. Garcia and Tapia cannot be seen in this view. Robertson at one point begins to hop and continues to walk away from Garcia and Tapia with the gun in his hand. Robertson then falls to the ground and begins to crawl away from Garcia and Tapia with the gun in his hand. Robertson appears to look back at Garcia and Tapia very quickly while he is still crawling. Robertson eventually stops crawling and appears motionless. [10]

[10] The entire incident from the time Garcia and Tapia are depicted outside their vehicles on Long Beach Boulevard, until Robertson stops moving, is approximately 55 seconds to one minute.

Photo of Robertson with arm extended and gun in his hand.

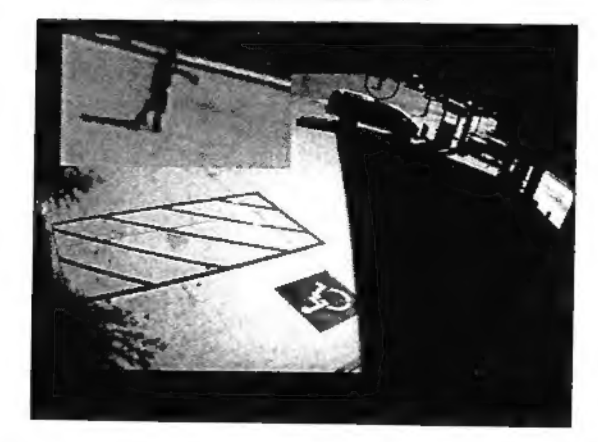
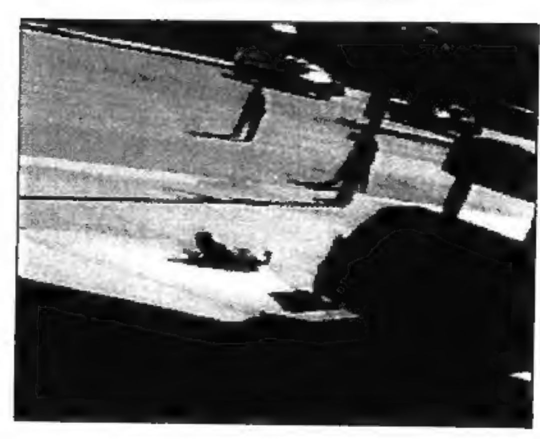


Photo of Robertson lying on the ground with gun in his hand.



Firearms

Robertson was armed with a .45 caliber semiautomatic pistol. The pistol was recovered from the ground northwest of Robertson. The gun was unloaded.

Garcia and Tapia were both armed with Beretta, Model 92F series, semiautomatic 9mm handguns.[11]

Autopsy

On December 16, 2015, Deputy Medical Examiner Odey Ukpo, M.D., performed a post-mortem examination of Robertson's body. Sixteen indeterminate range gunshot wounds that predominantly went from back to front, were observed during the autopsy. Doctor Ukpo ascribed the cause of death to multiple gunshot wounds.

A toxicology analysis revealed that Robertson had the presence of marijuana and phencyclidine, also known as angel dust, in his system at the time of his death.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

[11] The investigation determined that Garcia fired 17 rounds at Robertson and Tapia fired 16 rounds.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation shows that Deputies Garcia and Tapia responded to a call of a male shooting in the air. Garcia and Tapia observed Robertson with a gun in his hand and gave him repeated commands to drop the gun. Robertson ignored their commands and refused to comply. Robertson walked to a gas station where patrons were in close proximity and other individuals were on the street and in the immediate vicinity, placing them in imminent danger of death or great bodily injury should additional shots be fired. Garcia and Tapia were reasonably concerned for the safety of these individuals, as well as their own safety, and followed Robertson. Robertson turned to Garcia and Tapia and pointed the gun at them. Fearing for their lives, Garcia and Tapia fired their duty weapons at Robertson. Robertson fell to the ground but continued to move and remained armed with his weapon. As Robertson crawled away from the deputies, he turned in their direction with the gun in his hand. In response and reasonably in fear, the deputies again fired rounds at Robertson.

CONCLUSION

For the foregoing reasons, we conclude that Deputies Richard Ochoa-Garcia and Jasen Tapia acted lawfully in self-defense and defense of others when they used deadly force against Nicholas Robertson. We are therefore closing our file and will take no further action in this matter.